

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CHARLES W. JONES,

MEMORANDUM & ORDER  
12-CV-4051 (JS) (GRB)

Plaintiff,

-against-

BAY SHORE UNION FREE SCHOOL DISTRICT,  
PETER J. DION, EVELYN BLOISE HOLMAN,  
and ROBERT PASHKEN,

Defendants.

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APPEARANCES

For Plaintiff: E. Christopher Murray, Esq.  
Laura Nazginov, Esq.  
Ruskin Moscou Faltischek, P.C.  
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Uniondale, NY 11556

For Defendants: Steven C. Stern, Esq.  
Kaitlyn Rose McKenna, Esq.  
Mark A. Radi, Esq.  
Susan Hull Odessky, Esq.  
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SEYBERT, District Judge:

Pending before the Court are: (1) Bay Shore Union Free School District, Peter J. Dion, Evelyn Bloise Holman, and Robert Pashken's (collectively "Defendants") motion for attorneys' fees (Fee Mot., Docket Entry 66), and (2) Magistrate Judge Gary R. Brown's Report and Recommendation ("R&R") (R&R, Docket Entry 79) recommending that this Court deny Defendants' motion. For the

following reasons, the Court ADOPTS Judge Brown's R&R in its entirety.

#### BACKGROUND

Plaintiff commenced this action on August 14, 2012, alleging violations of his constitutional rights under the United States and New York Constitutions and intentional infliction of emotional distress. (Compl., Docket Entry 1, ¶¶ 36-49.) On March 16, 2016, this Court granted Defendants' motion for summary judgment and dismissed Plaintiff's claims. (SJ Order, Docket Entry 53.) On December 20, 2016, the Second Circuit affirmed the judgment in favor of Defendants. (Mandate, Docket Entry 61.) Having prevailed, Defendants filed a motion for attorneys' fees pursuant to 42 U.S.C. § 1988 on February 9, 2017. On April 12, 2017, the undersigned referred the motion to Judge Brown for a report and recommendation on whether the motion should be granted, and if necessary, to determine the appropriate amount of fees and costs to be awarded. (Referral Order, Docket Entry 75.)

#### The R&R

On August 22, 2017, Judge Brown issued his R&R recommending that the Court deny Defendants' motion for fees. (R&R at 7.) He found that "[a]t each stage of the litigation, judicial review established that, due to the complexities of these claims, there were at least some potentially meritorious--or at least justiciable--aspects of plaintiff's case." (R&R at 5.) He also

determined that Plaintiff's abandonment of several claims weighed against awarding attorneys' fees to Defendants. (R&R at 6.) Finally, Judge Brown concluded that the documentation submitted by Defendants was deficient in certain respects. (R&R at 6-7.) As a result, he concluded that Defendants failed to establish that they were entitled to attorneys' fees under section 1988. (R&R at 7, n.1.)

#### DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Brown's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

For the foregoing reasons, Judge Brown's R&R (Docket Entry 79) is ADOPTED in its entirety. Defendants' motion for attorneys' fees (Docket Entry 66) is DENIED.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: September 11, 2017  
Central Islip, New York